
From: Michael A. Francis <MFrancis@DDSFFIRM.com>
Sent: Friday, August 08, 2014 7:56 AM
To: Berninger, Stephen
Cc: Karl.Fingerhood@usdoj.gov; Gitin, Deborah (ENRD); Brenda L. Tavera; Jim Stull; 'JULIAN A. POLLOK'
Subject: RE: Omega Site OU2 tolling agreement--Continental Heat Treating, Inc.
Attachments: 20140806_Omega Tolling Agmt (Grp3)_ContinentalHeat-1.pdf; 20140806_Omega Tolling Agmt (Grp3)_ContinentalHeat-2.pdf

Good Morning Steve—

As I indicated in my August 7, 2014 voicemail message to you, Continental Heat Treating, Inc. (“CHT”) is inclined to sign a tolling agreement in connection with the Omega Chemical Corporation Superfund Site (“Omega site”). However, paragraph 9 of the proposed tolling agreement may be construed as being prejudicial to CHT in its current form. Since CHT has already settled all claims in connection with the Omega site, including without limitation “unreimbursed response costs at the Omega Chemical Corporation Superfund Site,” it is not appropriate for it to agree that it reasonably anticipates litigation over the “Tolled Claims.” CHT requests paragraph 9 be revised to address this issue.

As a general point regarding a tolling agreement, if CHT does sign a tolling agreement, such agreement of course will be conditioned upon CHT receiving an original of the fully executed tolling agreement from the United States. Please have the appropriate revisions made to accomplish this.

With respect to a meeting with CHT representatives, CHT continues to be ready to meet with the appropriate EPA and DOJ representatives to discuss the Omega site and CHT’s settlement of all claims regarding the Omega site.

Please call me at your convenience.

Michael A. Francis
Partner
DEMETRIOU, DEL GUERCIO, SPRINGER & FRANCIS, LLP
700 South Flower Street, Suite 2325
Los Angeles, California 90017
Phone (213) 624-8407
Fax (213) 624-0174
Email: mfrancis@ddsffirm.com
<http://www.ddsffirm.com/>

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From: Berninger, Stephen [<mailto:Berninger.Stephen@epa.gov>]
Sent: Wednesday, August 06, 2014 6:41 PM
To: Michael A. Francis

Cc: Karl.Fingerhood@usdoj.gov; Gitin, Deborah (ENRD)

Subject: Omega Site OU2 tolling agreement

Mr. Francis:

This email relates to EPA's ongoing efforts to investigate and remediate contaminated groundwater (OU2) at the Omega Chemical Superfund Site (Site). As you likely are aware, we are involved in a number of simultaneous negotiations with PRPs at the Site. Because the complexity of these negotiations means that they are likely to take at least several further months to conclude, we are sending uniform tolling agreements to all noticed PRPs (with a few minor exceptions) to preserve the status quo of existing claims during pending negotiations. Attached is an advance courtesy copy of letters you and your client will be receiving in the mail.

We've asked for a signature on the tolling agreement to be sent no later than August 21, 2014 (the attached letters state August 19). If you provide a pdf of the signature, we would ask that you also provide an original hard copy to Tori Reeder, U.S. Department of Justice, at the address in the attached letter.

We understand that you may want to meet with EPA to further discuss matters related to your client's facility. We will be in touch shortly after receiving the tolling agreement to schedule a date for such a meeting.

Please let me know if you have any questions. We appreciate your immediate attention to this matter.

Steve Berninger
Assistant Regional Counsel
EPA Region IX
75 Hawthorne St., ORC-3
San Francisco, CA 94105
berninger.stephen@epa.gov
(415) 972-3909



U.S. Department of Justice

Environment and Natural Resources Division

90-11-3-06529/10

Environmental Enforcement Section
301 Howard Street, Suite 1050
San Francisco, CA 94105

Telephone (415) 744-6491
Facsimile (415) 744-6476

August 6, 2014

Via Federal Express

Michael A. Francis, Esq.
Demetriou, Del Guercio, Springer & Francis, LLP
For Continental Heat Treating, Inc.
700 South Flower Street, Suite 2325
Los Angeles, CA 90017

Re: Continental Heat Treating, Inc.
Tolling Agreement related to Omega Chemical Corporation Superfund Site

Dear Michael A. Francis:

This letter relates to the U.S. Environmental Protection Agency (EPA)'s ongoing efforts to investigate and remediate contaminated groundwater at the Omega Chemical Corporation Superfund Site (Site), Operable Unit 2 (OU2), in Los Angeles County, California. The Site encompasses the former location of the used solvent and refrigerant recycling, reformulation, and treatment facility known as Omega Chemical, at 12504 and 12512 Whittier Boulevard in Whittier, California, as well as the plume of contaminated groundwater emanating from the Omega Chemical property, much of which has commingled with chemicals released at other locations into a continuous plume approximately 4.5 miles long and 1.5 miles wide.

On December 18, 2013, EPA sent Continental Heat Treating, Inc. a general notice letter under Section 122(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9622(e), regarding Continental Heat Treating, Inc.'s responsibility for cleaning up the Site and paying costs EPA has incurred in responding to releases at the Site. As you may be aware, EPA is in settlement negotiations for reimbursement of such costs and performance of remedial design/remedial action, as described in EPA's September 20, 2011 Interim Action Record of Decision (ROD).

The United States, on behalf of EPA, contends that it may have a cause of action against Continental Heat Treating, Inc. pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for cost recovery and performance of response actions, due to releases or threatened releases of hazardous substances at the Site. In order to avoid the burden and expense of litigation, however, and to allow additional time for settlement negotiations, the United States wishes to enter into the enclosed tolling agreement with Continental Heat Treating, Inc.

For these reasons, we ask that you **provide a signed tolling agreement to EPA no later than August 19, 2014**. This is a uniform tolling agreement that we are sending to all noticed potentially responsible parties (PRPs) at the Site; due to the number of PRPs, we do not

anticipate making any changes to the agreement. If you do not provide a signed tolling agreement by such date, the U.S. Department of Justice may file a civil action against Continental Heat Treating, Inc. in U.S. District Court.

Please send the signed tolling agreement to:

Victoria Reeder
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
301 Howard Street, Suite 1050
San Francisco, CA 94105
Victoria.Reeder@usdoj.gov

If you provide a pdf signature page, please also provide an original hard copy.

If you have any questions about this matter, please contact Steve Berninger, EPA Assistant Regional Counsel, at (415) 972-3909, or berninger.stephen@epa.gov. After August 22, please contact Karl Fingerhood, U.S. Department of Justice, at (202) 514-7519, or karl.fingerhood@usdoj.gov.

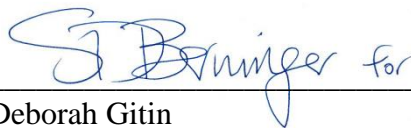
We understand that Continental Heat Treating, Inc. would like to meet with EPA to further discuss matters related to its facility and remediation of OU2 contamination. We will be in touch shortly after receiving the tolling agreement to schedule a date for such a meeting.

We appreciate your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Fingerhood for", written over a horizontal line.

Karl Fingerhood
Senior Counsel
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

A handwritten signature in blue ink, appearing to read "D. Gitin for", written over a horizontal line.

Deborah Gitin
Senior Counsel
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

Enclosure

cc (w/enc.): S. Berninger, EPA

TOLLING AGREEMENT
FOR CLAIMS UNDER THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND LIABILITY ACT,
RELATING TO THE OMEGA CHEMICAL CORPORATION SUPERFUND SITE

The United States, on behalf of the United States Environmental Protection Agency, contends that it has a cause of action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. §9601, *et seq.*, against Continental Heat Treating, Inc. (“Defendant”) for, *inter alia*, the recovery of unreimbursed response costs at the Omega Chemical Corporation Superfund Site in Los Angeles County, California (the “Tolled Claims”).

The United States and Defendant (“Parties”) enter into this Tolling Agreement to facilitate settlement negotiations between the Parties within the time period provided by this Agreement, without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Notwithstanding any other provision of this Tolling Agreement, the period commencing on August 1, 2014 and ending on July 31, 2015, inclusive (the “Tolling Period”), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States on the Tolled Claims.
2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.
3. Defendant shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
4. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable.
5. This Tolling Agreement may not be modified except in a writing signed by all the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.
6. It is understood that the United States may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to defendant. Where the

United States elects to terminate negotiations under this Paragraph, the Tolling Period shall continue for the duration set forth in Paragraph 1. Nothing herein shall preclude the commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice.

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against Defendant or the date on which the United States may file such a complaint, except as expressly stated herein.

8. This Agreement is not intended to affect any claims by or against third parties, or any claims that Defendant may have.

9. The Parties acknowledge that federal law imposes an obligation to implement a litigation hold when litigation is reasonably anticipated. The Parties agree that at least as of the date of this agreement, they reasonably anticipate litigation over the Tolerated Claims.

10. This Tolling Agreement is effective upon execution by the Defendant, and without the requirement of filing with the Court, and may be signed in counterparts.

11. This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

12. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Agreement shall be binding upon the United States, acting on behalf of the United States Environmental Protection Agency and upon Defendant and its successors.

SIGNATURES

The United States, on behalf of the United States Environmental Protection Agency, consents to the terms and conditions of this Tolling Agreement by its duly authorized representatives on this ____ day of August, 2014.

HENRY FRIEDMAN
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
(with authority by Karl Fingerhood or Deborah
Gitin)

Karl Fingerhood or Deborah Gitin
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

Defendant consents to the terms and conditions of this Tolling Agreement by its duly authorized representative on this ____ day of August, 2014.

Name: _____

Title: _____



U.S. Department of Justice

Environment and Natural Resources Division

90-11-3-06529/10

*Environmental Enforcement Section
301 Howard Street, Suite 1050
San Francisco, CA 94105*

*Telephone (415) 744-6491
Facsimile (415) 744-6476*

August 6, 2014

Via Federal Express

James Stull, President
Continental Heat Treating, Inc.
10643 Norwalk Boulevard
Santa Fe Springs, CA 90670

Re: Continental Heat Treating, Inc.
Tolling Agreement related to Omega Chemical Corporation Superfund Site

Dear James Stull:

This letter relates to the U.S. Environmental Protection Agency (EPA)'s ongoing efforts to investigate and remediate contaminated groundwater at the Omega Chemical Corporation Superfund Site (Site), Operable Unit 2 (OU2), in Los Angeles County, California. The Site encompasses the former location of the used solvent and refrigerant recycling, reformulation, and treatment facility known as Omega Chemical, at 12504 and 12512 Whittier Boulevard in Whittier, California, as well as the plume of contaminated groundwater emanating from the Omega Chemical property, much of which has commingled with chemicals released at other locations into a continuous plume approximately 4.5 miles long and 1.5 miles wide.

On December 18, 2013, EPA sent Continental Heat Treating, Inc. a general notice letter under Section 122(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9622(e), regarding Continental Heat Treating, Inc.'s responsibility for cleaning up the Site and paying costs EPA has incurred in responding to releases at the Site. As you may be aware, EPA is in settlement negotiations for reimbursement of such costs and performance of remedial design/remedial action, as described in EPA's September 20, 2011 Interim Action Record of Decision (ROD).

The United States, on behalf of EPA, contends that it may have a cause of action against Continental Heat Treating, Inc. pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for cost recovery and performance of response actions, due to releases or threatened releases of hazardous substances at the Site. In order to avoid the burden and expense of litigation, however, and to allow additional time for settlement negotiations, the United States wishes to enter into the enclosed tolling agreement with Continental Heat Treating, Inc.

For these reasons, we ask that you **provide a signed tolling agreement to EPA no later than August 19, 2014**. This is a uniform tolling agreement that we are sending to all noticed potentially responsible parties (PRPs) at the Site; due to the number of PRPs, we do not anticipate making any changes to the agreement. If you do not provide a signed tolling

agreement by such date, the U.S. Department of Justice may file a civil action against Continental Heat Treating, Inc. in U.S. District Court.

Please send the signed tolling agreement to:

Victoria Reeder
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
301 Howard Street, Suite 1050
San Francisco, CA 94105
Victoria.Reeder@usdoj.gov

If you provide a pdf signature page, please also provide an original hard copy.

If you have any questions about this matter, please contact Steve Berninger, EPA Assistant Regional Counsel, at (415) 972-3909, or berninger.stephen@epa.gov. After August 22, please contact Karl Fingerhood, U.S. Department of Justice, at (202) 514-7519, or karl.fingerhood@usdoj.gov.

We understand that Continental Heat Treating, Inc. would like to meet with EPA to further discuss matters related to its facility and remediation of OU2 contamination. We will be in touch shortly after receiving the tolling agreement to schedule a date for such a meeting.

We appreciate your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Fingerhood for", written over a horizontal line.

Karl Fingerhood
Senior Counsel
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

A handwritten signature in blue ink, appearing to read "D. Gitin for", written over a horizontal line.

Deborah Gitin
Senior Counsel
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

Enclosure

cc (w/enc.): S. Berninger, EPA

TOLLING AGREEMENT
FOR CLAIMS UNDER THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND LIABILITY ACT,
RELATING TO THE OMEGA CHEMICAL CORPORATION SUPERFUND SITE

The United States, on behalf of the United States Environmental Protection Agency, contends that it has a cause of action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. §9601, *et seq.*, against Continental Heat Treating, Inc. (“Defendant”) for, *inter alia*, the recovery of unreimbursed response costs at the Omega Chemical Corporation Superfund Site in Los Angeles County, California (the “Tolled Claims”).

The United States and Defendant (“Parties”) enter into this Tolling Agreement to facilitate settlement negotiations between the Parties within the time period provided by this Agreement, without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Notwithstanding any other provision of this Tolling Agreement, the period commencing on August 1, 2014 and ending on July 31, 2015, inclusive (the “Tolling Period”), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States on the Tolled Claims.
2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.
3. Defendant shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
4. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable.
5. This Tolling Agreement may not be modified except in a writing signed by all the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.
6. It is understood that the United States may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to defendant. Where the

United States elects to terminate negotiations under this Paragraph, the Tolling Period shall continue for the duration set forth in Paragraph 1. Nothing herein shall preclude the commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice.

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against Defendant or the date on which the United States may file such a complaint, except as expressly stated herein.

8. This Agreement is not intended to affect any claims by or against third parties, or any claims that Defendant may have.

9. The Parties acknowledge that federal law imposes an obligation to implement a litigation hold when litigation is reasonably anticipated. The Parties agree that at least as of the date of this agreement, they reasonably anticipate litigation over the Tolerated Claims.

10. This Tolling Agreement is effective upon execution by the Defendant, and without the requirement of filing with the Court, and may be signed in counterparts.

11. This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

12. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Agreement shall be binding upon the United States, acting on behalf of the United States Environmental Protection Agency and upon Defendant and its successors.

SIGNATURES

The United States, on behalf of the United States Environmental Protection Agency, consents to the terms and conditions of this Tolling Agreement by its duly authorized representatives on this ____ day of August, 2014.

HENRY FRIEDMAN
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
(with authority by Karl Fingerhood or Deborah Gitin)

Karl Fingerhood or Deborah Gitin
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

Defendant consents to the terms and conditions of this Tolling Agreement by its duly authorized representative on this ____ day of August, 2014.

Name: _____

Title: _____